IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2623 OF 2005

Rudolph Denis Sequeira. ... Applicant.
Versus.
State of Maharashtra, GBCB CID. ... Respondent.

Shri A.P.Mundargi with Shri Jaykumar D.Ved for the Applicant.

Shri A.S.Gadkari, A.P.P.for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 16th June, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. This is an application under section 438 of the Code of Criminal Procedure, 1973. for grant of anticipatory bail. The anticipatory bail is sought as the Applicant is apprehending arrest in connection with C.R.No.364 of 2004 registered on 15th December 2004 against the Applicant and against one Shri Jayantilal Mistry on a complaint from Akola Janata Commercial Cooperative Bank Ltd., Akola which is now being investigated by the G.B.C.B. C.I.D. Mumbai (Economic Offence Wing) under its C.R.No.105 of 2004. In the complaint which is filed by Akola Janata Commercial Cooperative Bank Ltd., it is alleged that the said Jayantilal Mistry has given bogus letters of credit to the Bank and had cheated the Bank to the tune of Rs.46,49,400/-. Offence is registered

under sections 465, 467, 468, 420 and 409 read with section 120B of the Indian Penal Code. The allegation of the prosecution is that the Applicant in conspiracy with the said Jayantilal Mistry had accepted bogus/forged letters of credit issued in the name of the Central Bank of India, Kalbadevi Branch. At the relevant time the Applicant was working as a Branch Manager of the Kalbadevi Branch of the said Akola Janata Commercial Cooperative Bank Ltd. The Applicant has been in service of the said Bank from the year 1998. On 17th April 2004 the said Jayantilal on behalf of M/s.Sudha International Corporation as its Proprietor opened current account in the said Kalbadevi Branch. On 10th June 2004 three letters of credit purported to have been issued by the Central Bank of India, Colaba Branch in the sum of Rs.46,49,400/- were presented by the said Jayantilal for discounting. The case is that the said letters of credit were fabricated and the Applicant without verification of the genuineness of the said letters of credit discounted the same and credited the amount to the account of the said Jayantilal Mistry. The date of expiry of the said Letters of credit was 6th September 2004. In the meanwhile the said Jayantilal withdrew the said amount credited to his account from the Kalbadevi Branch of the said Bank. The allegation against the Applicant is that he did not present the Letters of Credit to the Central Bank of India on its

due date. In October 2004 it was revealed that the Central Bank of India never issued the Letters of Credit and therefore, the said Jayantilal was asked to make payment of the due amount. The cheque issued by the said Jayantilal came to be dishonoured. The case is that the Applicant himself sought permission to take action against the account holder. On 15th December 2004 the Bank lodged a complaint against the Applicant and Jayantilal. It is brought on record that on 11th September 2004 by a communication, the Central Bank of India disclosed that the Letters of Credit were fabricated.

2. The case of the Applicant is that on 10th June 2004 he had addressed a letter to the Branch Manager of the Central Bank of India, Colaba Branch, seeking confirmation of Letters of Credit and on the same day the Central Bank of India replied and confirmed and therefore, he discounted the Letters of Credit. According to the prosecution, it was revealed that the letter dated 10th June 2004 never reached the Central Bank of India, Colaba Branch and the said reply of the Bank was found to be fabricated. It is the case of the prosecution that the said Jayantilal accompanied a Peon of Kalbadevi Branch of Akola Bank to Central Bank of India, Colaba Branch, along with letter dated 10th June 2004 sent by the Applicant for confirmation of LCs. The

said Peon has disclosed in his statement that when he along with the said person went to the Colaba Branch, one person came out of the counter and collected the envelop containing LCs and letter. He went inside and came back immediately within a period of 15 to 20 minutes with a sealed envelop. The said sealed envelope contained the letter of confirmation.

3. The learned Counsel Shri Mundargi appearing for the Applicant has invited my attention to the correspondence on record. He invited my attention to the complaint made by the Applicant against the said Jayantilal Mistry to Police authorities. He invited my attention to the assertions made in the complaint under section 138 of the Negotiable Instruments Act filed by Akola Janata Commercial Cooperative Bank against Jayantilal Mistry which is based on the dishonour of the cheques issued by the said Jayantilal when the said Jayantilal was called upon by the said Bank to make payment of the amount which was credited to his account on the basis of the forged letters of credit. He pointed out that in the said complaint which is filed on 7th January 2005 it is alleged that the letters of credit which were produced by Jayantilal were sent to the Central Bank of India for confirmation and only thereafter the letters of credit were discounted. He has invited my attention to the averments made in the affidavit of the Applicant which

is tendered on record. In the said affidavit it is set out as to how the Applicant is cooperating with the investigating agency. Shri Mundargi submitted that after the learned Sessions Judge rejected the Application for anticipatory bail, ad-interim relief was continued till 4th March 2005 and from 5th March 2005 till 29th April 2005 when this Court passed order granting ad-interim relief, there was no restraint order against the arrest of the Applicant and the Applicant has not been arrested. Shri Gadkari, the learned A.P.P. has relied on various documents on record and the affidavit of the Investigating Officer tendered on record. He pointed out that the main accused Jayantilal is absconding. He pointed out that whenever the Applicant was called for investigation, he assured that he would trace out Jayantilal. However, he has not kept his assurance. By pointing that socalled confirmation letter of the Central Bank of India is obviously fabricated, he submitted that the involvement of the Applicant is very clear and custodial interrogation is necessary.

4. I have considered the submissions. The F.I.R. is registered at the instance of the Akola Janata Commercial Cooperative Bank. It is pertinent to note that in a complaint under section 138 of the Negotiable Instrument Act filed by the said Bank against the said

Jayantilal, the Bank has relied upon the letter of confirmation of the Letters of Credit by the Central Bank of India, Colaba Branch. The said complaint is verified by the Assistant General Manager of the said Bank. It will be necessary to refer to the affidavit of the Applicant. It is stated that he is no more the Manager of the Branch and all the documents are with the Bank. He has set out in the affidavit the manner in which he has cooperated with the Investigating Officer. He has set out in paragraph 11 the efforts made by him to trace out the said Jayantilal.

5. In the affidavit of the Investigating Officer, it is stated that the statement of the Peon of the Bank is recorded wherein he has stated that he had accompanied the said Jayantilal to the Central Bank of India, Colaba Branch alongwith letter of the Applicant dated 10th June 2004 and when they reached there, one person came out of the counter and collected the envelop containing the LCs and went inside and came back immediately within a period of 15-20 minutes with a sealed envelop. In the said sealed envelop the letter of confirmation of letters of credit was found which is allegedly fabricated. In the affidavit it is stated that the requisite procedure was not followed by the Applicant-Accused and the letters of credit were accepted directly. It is stated that the Applicant is

not cooperating with the Investigating Officer.

6. It is pertinent to note that though there was no restraint order from 5th March to 28th April 2005 no efforts were made to take Applicant into custody. There is prima facie material on record to show that the Applicant acted on the basis of the alleged confirmation received from the Central Bank of India, Colaba Branch, which is said to be a forged letter. It is admitted position that the Applicant issued a letter seeking confirmation from the Central Bank of India and the same was delivered to the Central Bank of India through a Peon. It is not the case of the prosecution that the Peon sent to the Central Bank of India was a part of the conspiracy. The letter of confirmation was handed over to the Applicant by the Peon in a sealed envelop.

7. The Applicant has been placed on suspension and it is not the case of the prosecution that the Applicant is avoiding to meet the Investigating Officer for the purpose of investigation. Considering the averments made by the Complainant-bank in the complaint under section 138 of the Negotiable Instrument Act it appears that even the said Bank has accepted the fact that the Applicant acted on the said letter of confirmation purportedly received from the Central Bank of India which was subsequently found to be forged. The fact

that the Applicant was at large from 5th March 2005 to 28th March 2005 without there being any restraint order against arrest also reflects on the alleged need pleaded by the prosecution for custodial interrogation.

8. Considering the nature of allegations against the Applicant and the facts and circumstances discussed above and considering the fact that the Applicant has been attending the office of the Investigating Officer, a case is made out for grant of anticipatory bail. However, stringent conditions will have to be imposed considering the seriousness of the offence. The Applicant will have to furnish a bail bond in the sum of Rs.1 lakh with one or two local sureties in the like amount. The learned A.P.P. submitted that the Applicant will have to attend the office of the Investigating Officer as and when called upon to do so.

9. Hence I pass the following order:

(i) In the event of the Applicant's arrest in connection with C.R.No.105/2004 of Economic Offence Wing of the G.B.C.B. C.I.D.Mumbai (original C.R.No.362/2004 of L.T.Marg Police Station) he shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.1 lakhs with one

or two local sureties in like amount. The bail is granted on further condition that the Applicant will attend the office of the Investigating Officer as and when called upon. The Applicant will comply with all conditions incorporated in clauses (i) to (iii) of sub-section 2 of section 438 of the Code of Criminal Procedure, 1973.

(ii) The order of anticipatory bail will enure to the benefit of the Applicant only till the charge sheet is filed and thereafter he will be at liberty to make appropriate application to the trial Court.

Judge.